

**Foundation for Comprehensive Health Services and  
Midlevel Practitioners Group of The Founda-  
tion for Comprehensive Health Services. Case  
20-CA-15033**

April 9, 1982

**ORDER REMANDING PROCEEDING  
FOR HEARING**

**BY MEMBERS FANNING, JENKINS, AND  
ZIMMERMAN**

On August 13, 1980, the National Labor Relations Board issued a Decision and Order in the above-captioned case,<sup>1</sup> finding by summary judgment that Respondent had violated Section 8(a)(5) and (1) of the Act by refusing to bargain collectively with the Union, following a Board election and certification. The Union had filed a petition seeking to represent a unit of professional employees at Respondent's California locations, including the family nurse practitioners, physician assistants, and registered nurses, excluding physicians, social workers, trainees and other employees, guards and supervisors as defined in the Act. The Regional Director on July 12 found the bargaining unit to be appropriate on the basis that such employees shared a community of interest. The Regional Director further found that the only social worker employed by Respondent, although stipulated to be a professional employee, did not share this community of interest, and excluded her from the unit.

Following the election, the tally of ballots showed that of 14 eligible voters 5 cast ballots for, and 1 cast a ballot against, the Union. There were five challenged ballots, a number sufficient to affect the results, and one void ballot. No objections were filed. On October 17, 1979, the Regional Director issued a Supplemental Decision, Revised Tally of Ballots and Certification of Representative, sustaining the challenges to a family nurse practitioner trainee and of a social worker, and certifying the Union as the exclusive collective-bargaining representative of the employees in the unit found appropriate. The revised tally of ballots showed that five employees had voted for the Union and one against. There were three challenged ballots, and one sustained challenged ballot (that of the social worker). Respondent refused to bargain with the Union in order to test the appropriateness of the unit. Following a petition filed by the Board with the United States Court of Appeals

for the Ninth Circuit, the court on July 17, 1981, by *per curiam* memorandum refused to enforce the Board's Order, and remanded the case for reconsideration of the unit determination in light of the "disparity of interest" test it had announced in *N.L.R.B. v. St. Francis Hospital of Lynwood*, 601 F.2d 404, 418-419 (9th Cir. 1979). The court directed the Board to consider whether the enumerated differences between the social worker and the other professional employees would preclude effective representation of such other employees, and whether such exclusion of the social worker classification would create a residual group of employees eluding representation. See *Mount Airy Foundation d/b/a Mount Airy Psychiatric Center*, 253 NLRB 1003 (1981).

The Board accepted the remand and advised the parties that they could file statements of position. Thereafter, Respondent filed a statement and supporting argument.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Accepting the court's opinion as the law of the case, we conclude that a hearing on remand is necessary to determine the unit status of the social worker under the test set forth by the court, including the question as to whether or not additional persons have been hired in this classification. Also, as the ballot of the social worker could now be determinative, and there are also three other challenged ballots which have not been determined, we shall direct a hearing on all four ballots.

It is hereby ordered that the case be, and it hereby is, remanded to the Regional Director for Region 20 for the purpose of scheduling a hearing before an administrative law judge to determine the disposition of the challenged ballots of Margaret Davis, Mary O'Hara Devereaux, Leona Judson, and Hal Tune.<sup>2</sup>

It is directed that the proceeding herein be, and it hereby is, remanded to the Regional Director for Region 20 for further proceedings consistent herewith, including the arranging of the scheduling of a hearing before an administrative law judge to determine the disposition of the above-mentioned challenged ballots, and that the Regional Director be, and he hereby is, authorized to issue notice thereof.

<sup>1</sup> 251 NLRB 161.

<sup>2</sup> *Robert's Tours, Inc.*, 244 NLRB 818 (1979).